

Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION ORDER NO. 668-F

Case No. 94-4M/89-31C

(Consolidated PUD & Map Amendment @ 500 5th Street, N.W.)

February 9, 1998

By Zoning Commission Order No. 668, dated July 9, 1990, the Zoning Commission for the District of Columbia approved the application of 488 Associates Limited Partnership, the Salvation Army, the Fraternal Order of Police and John W. and Vinard Paris for a consolidated review and approval of a planned unit development (PUD) and related map amendment from SP-2 to C-3-C for lots 15-19, 24, 25, 821-823, and a closed public alley in Square 488, located at 500 5th Street, N.W.

Order No. 668 provided for the construction of a mixed-use commercial building with a height of 120 feet, a maximum floor area ratio (FAR) of 7.64, and a lot occupancy of 99 percent. The approved PUD was subject to certain guidelines, conditions and standards.

By letter dated October 3, 1990, counsel for the applicant requested the Zoning Commission to modify the second sentence in condition No. 6 of Z.C. Order No. 668, relating to ingress and egress. The letter also requested the Commission to extend the validity of the PUD for two years.

By Z.C. Order No. 668-A, dated November 19, 1990, the Commission approved the applicant's request and modified Condition No. 6 to read as follows:

"The applicant shall provide two lanes 'in' and either one or two lanes 'out' for vehicular traffic in the interior of the parking garage."

By Z.C. Order No. 668-B, dated August 5, 1991, the Commission granted the applicant's second extension request and extended the validity of Z.C. Order Nos. 668 and 668-A for a period of two years, until July 27, 1994 with construction to start not later than July 27, 1995.

By Order No. 668-C, the Commission extended the validity of Z.C. Order Nos. 668, 668-A and 668-B for a period of two years, until July 27, 1996 construction to start not later than July 27, 1997.

At the request of the applicant, by letter dated March 10, 1994, the Commission By Z.C. Order No. 668-D, dated November 14, 1994, approved a modification of the existing PUD to include as alternative development, Lots 833 and 842 at the northern end of Square 488. Lots 833 and 842 were unzoned District of Columbia property developed with a fire station. The

applicant requested that the unzoned property be zoned C-3-C to be consistent with the zoning of the remainder of the square approved by the Commission in Z.C. Order No. 668.

Z.C. Order No. 668-D, dated November 14, 1994, the Zoning Commission approved the modification to the PUD and the map amendment to C-3-C for Lots 833 and 842. Z.C. Order No. 668-D provided for an office/retail building with a gross floor area (including the fire station) of 448,525 square feet, an FAR of 7.64, height of 120 feet and 212 off-street parking spaces with a potential for approximately 313 parking spaces through a staked parking scheme, and a minimum of ten bicycle parking spaces, or in the alternative to proceed under the original PUD approval contained in previous Z.C. Order Nos. 668, 668-A, 668-B, and 668-C.

The validity of Z.C. Order No. 668-D was for two years, that is until December 9, 1996 to file for a building permit, with construction to commence not later than December 9, 1997.

By letter dated September 21, 1995, counsel for the applicant filed a motion for the extension of Z.C. Order Nos. 668, 668-A, 668-B, 668-C , and 668-D for two years. The motion requested that Z.C. Order Nos. 668, 668-A, 668-B, 668-C be extended to July 27, 1998 to file for a building permit, with construction to commence no later than July 27, 1999, and Z.C. Order No. 668-D to be extended to December 9, 1998 to file for a building permit, and construction to begin no later than December 9, 1999.

The applicant's motion for extension stated, in part, the following as the basis for the extension.

1. The applicant has not proceeded with construction since the PUD's approval solely because of unfavorable market conditions. These conditions have placed a halt almost all new private construction projects in the past six years. The applicant has been unable to secure financing to allow the project to proceed without a lead tenant in place and the project substantially pre-leased.
2. The unfavorable market conditions and the applicant's continuous actions to market the project, including the PUD modification to utilize the air rights over the fire house, are both highly relevant to the demonstration of good cause. On the basis of these factors, an extension for good cause shown is merited without hearing.

By Z.C. Order No. 668-E, dated, February 12, 1996, the Commission granted the applicant's motion for extension and extended the validity of Z.C. Order No. 668 through 668-C for two years; that is, until July 27, 1998, to file for building permit, with construction to begin no later than July 27, 1999. Additionally, by Z.C. Order No. 668-E, the Commission extended Order No. 668-D for a period of two years; that is, until December 9, 1998; with construction to begin no later than December 9, 1999.

By correspondence dated September 17, 1997, counsel for the applicant filed a motion requesting the Commission to further extend the validity of Zoning Commission Order Nos. 668, 668-A,

668-B, 668-C, and 668-E for five-years until July 27, 2003, and for Order No. 668-D, until December 9, 2003, pursuant to Subsection 2408 of the Zoning Regulations.

The motion noted that the sole criteria for determining whether a PUD should be extended is whether there is "good cause shown", 11 DCMR 2408.11. In its Order No. 810, the Zoning Commission adopted good cause standards for PUD time extensions.

In Paragraph 2408.11(a), the Commission specifically provides that an inability to obtain sufficient project financing, coupled with an applicant's good faith efforts to obtain such financing, is a criteria for establishing good cause for a time extension.

The Commission, in Order Nos. 668-B, 668-C, 668-D and 668-E, determined that the applicant had not proceeded with construction since the PUD's approval because of unfavorable market conditions, and that as of the time of each extension approval, the applicant had been unable to secure financing that would allow the project to proceed without a lead tenant or without the project being substantially pre-leased."

The applicants motion also discussed Paragraph 2408.10(b) of the Regulations which provides that the Zoning Commission may extend the for the good cause shown; Provided, that the Zoning Commission determines that there is no substantial change in any of the material facts upon which the Zoning Commission based its original approval of the PUD.

The applicants motion stated that there have been no changes impacting the PUD since Order No. 668-D was issued approving the third time extension.

The applicants motion stated that no hearing is necessary pursuant to 11 DMR Subsection 2408.12 regarding this time extension request.

The motion states that the applicant meet the criteria under Paragraph 2408.11(a) as a demonstration of good cause. Thus, there is no need for a Subsection 2408.12 hearing to determine whether a material factual conflict exists with respect to the criteria of Subsection 2408.11.

The counsel for the applicant also indicated that copies of the motion for extension were served on Advisory Neighborhood Commission (ANC) 6A within whose jurisdiction the property is now situated, and to all parties in the case.

By memorandum dated, September 24, 1997, the District of Columbia Office of Zoning (OZ) referred the extension request to the District of Columbia Office of Planning (OP) for an analysis of whether any amendments to the Zoning Map or Regulations, or to the Comprehensive Plan, since the Zoning Commission initially decided the case would affect this request.

OP, by memorandum dated December 3, 1997, analyzed the motion for extension and found that neither the Zoning Regulations and Map nor the Comprehensive Plan, as they relate to the project, have changed since the Zoning Commission originally approved the PUD.

The OP stated that no purpose would be served by denying the extension. Accordingly, OP recommended that the Commission extend the validity of the PUD for two years instead of five years as requested by the appellant.

The OP added that there is nothing substantial in the application to justify departure from the normal two-year period for PUD extensions.

By letter dated December 5, 1997 the District of Columbia Redevelopment Land Agency (RLA) supported the applicant's request for extension. RLA indicated that it has approved the terms and conditions of a contract to sell to the applicant the air rights over the fire station located on Disposition Lot 7 of the Urban Renewal Plan which was incorporated into the project by Z.C. Order No. 688-D. The letter further stated that the contract negotiated with the developer of the project represents the best market driven approach to achieve the objectives of the project.

The OZ received no additional comments on this matter from ANC-6A, nor any other party.

Pursuant to Subsection 2408.10 of the Zoning Regulations, the Commission may extend the validity of a PUD approval for good cause shown upon a request being made before the expiration of the approval.

On December 8, 1997, at its regular monthly meeting, the Commission considered the applicants' request for a five-year extension of the validity of Z.C. Order Nos. 688, 688-A, 688-B, 688-C, 688-D, and 688-E, the OP report and recommendations, and the RLA letter.

The Commission concurred with the OP that an extension of the order should be granted, and that there is nothing unique in the applicant's request to justify a departure from the normal two-year extension to a five-year extension.

The Commission found that the applicant had met the requirements under Section 2408(a) in regard to good cause and that there is no need for a hearing to determine whether a material conflict exists pursuant to Subsection 2408.12 of the Zoning Regulations.

The Commission determined that the reasons advanced by the applicant for the extension request constitute good cause and that the request was filed timely, pursuant to Subsection 2408.10 of the Zoning Regulations. The Commission determined that the applicant demonstrated its willingness to go forward with the development of the project as soon as market conditions improve, and demonstrated diligent good faith efforts to secure financing by negotiating the air rights agreement with RLA to improve the marketability of the project.

The Commission believes that an extension of time, as requested by the applicant, is not unreasonable, that the rationale for granting approval for the PUD has not changed, and that no adverse consequences will result from approving the request.

The Commission determined that an extension of time, as requested by the applicant, is in the best interest of the District of Columbia, is consistent with the intent and purpose of the Zoning Regulations and Zoning Act, and is not inconsistent with the Comprehensive Plan for the National Capital.

In consideration of the reasons set forth in this order, the Zoning Commission for the District of Columbia hereby **ORDERS** that the request to extend the validity of Z.C. Order Nos. 668, 668A, 668B, 668C, and 668-E be **APPROVED** for a period of **TWO YEARS**, until July 27, 2000, expiration of that time, the applicant shall file an application for a building permit, as specified in 11 DCMR 2408.8, and construction shall begin on or before July 27, 2001.


The Commission further **ORDERS** that the request to extend the validity of Z.C. Order No. 668-D be approved for a period of **TWO YEARS**, until December 9, 2000. Prior to the expiration of that time, the applicant shall file an application for a building permit, as specified in 11 DCMR 2408.8, and construction shall begin on or before December 9, 2001.

Vote of the Commission taken at the monthly meeting on December 8, 1997: 4-0 (Herbert M. Franklin, John G. Parsons, Jerrily R. Kress to extend, Maybelle Taylor Bennett, to extend by absentee vote.)

This Order was adopted by the Zoning Commission at its public meeting on February 9, 1998, by a vote of 4-0: (John G. Parsons, Herbert M. Franklin, Maybelle Taylor Bennett and Jerrily R. Kress, to adopt.)

In accordance with the provisions of 11 DCMR 3028.8, this order is final and effective upon publication in the D.C. Register; that, is, on MAR 6 1998.


MAYBELLE TAYLOR BENNETT
Chairperson
Zoning Commission


MADELIENE H. DOBBINS
Director
Office of Zoning